

REMARKS

Reconsideration of the pending application is respectfully requested on the basis of the following particulars:

Information disclosure statement (IDS)

Applicants respectfully direct the examiner's attention to the Information Disclosure Statement (IDS) filed on December 16, 2005. Applicants note that the examiner has not yet indicated that this IDS has been considered. Accordingly, Applicants respectfully request that the examiner return a copy of the initialed form 1449 with the next communication.

Rejection of claims 1-13 and 15-25 under 35 U.S.C. § 112, second paragraph

Claims 1-13 and 15-25 presently stand rejected as being indefinite. In particular, the examiner states that "claims 1 and 9 are directed to structure but recite limitations in terms of possibility," and that "it has been held that actions that may or may not be done is indefinite and does not distinguish the claim from the prior art," citing *In re Collier*, 158 USPQ 266.

Applicants respectfully disagree that the claims set forth "actions that may or may not be done." Instead, claims 1 and 9 set forth a system and a terminal, respectively, with a clear recitation of a configuration of the system and terminal, by which configuration the system and terminal are capable of performing certain functions.

For example, claim 1 recites within a system a terminal that is "configured to make a determination," and based on the determination to perform a further function. This is not indefinite, and does not set forth an action that may or may not be done.

Instead, such language clearly indicates that the terminal be configured to perform these functions. Even though the configuration of the terminal allows the terminal to recognize a condition and to conditionally perform a function if the condition is recognized, the configuration of the terminal is not conditional.

The examiner also notes that claim 1 recites “the start sequence comprising data read from the portable data carrier,” and states that a portable data carrier is not part of the system.

Applicants note that claim 1 includes each of said terminals having a reading apparatus for accessing a portable data carrier. Further, claim 1 is amended to clarify that the card data is read by the reading apparatus from a portable data carrier.

The examiner further asserts that claims 1, 9, 19, and 21 are incomplete for omitting essential elements. In particular, the examiner states that omitted elements are inserting a portable data carrier into a terminal, and reading data stored on the portable data carrier.

Claims 1 and 9 have been amended to more clearly recite that the terminal includes a reading apparatus for accessing a portable data carrier, and that the start sequence comprises card data read by said reading apparatus from a portable data carrier. Applicants note that these claims are directed to an apparatus (a system in claim 1 and a terminal in claim 9), and respectfully submit that a *method step* of “inserting a portable data carrier into a terminal” is not part of the claimed apparatus.

Additionally, claims 19 and 21 are amended to include a step of reading [data] from a portable data carrier.

Claim 6 is amended to recite at least one central processing unit configured to be conditionally included in processing a transaction.

The examiner also notes that the limitation “the type of transaction” in line 8 of claim 19 lacks antecedent basis. Claim 19 is amended to recite “identifying a type of transaction.”

In view of these amendments, it is respectfully submitted that claims 1-13 and 15-25 are fully compliant with the requirements of 35 U.S.C. § 112, second paragraph, and withdrawal of this rejection is respectfully requested.

Rejection of claims 1-13 and 15-25 under 35 U.S.C. § 103(a)

Claims 1-13 and 14-25 presently stand rejected as being unpatentable over Daly et al. (U.S. 5,878,141) in view of Southgate (U.S. 6,205,579). This rejection is respectfully traversed for at least the following reasons.

The presently pending independent claims have been amended to include encrypting/decrypting of the start sequence (wherein the start sequence is encrypted by the terminal prior to sending of the start sequence to the node computer, and is decrypted by the node computer).

It is respectfully submitted that the cited references fail to disclose or suggest each and every element of the presently claimed invention, and therefore these references fail to form a prima facie case of obviousness of the invention. Accordingly, it is respectfully submitted that claims 1-3 and 15-25 are allowable over the cited references, and withdrawal of the rejection is requested.

The independent claims (claims 1, 9, 19, and 21) are each recite that a start sequence, comprising card data read from the portable data carrier and requested transaction information, is sent to the node computer to request functionality data which configures a terminal to perform a requested transaction that the terminal is not presently configured to perform. Moreover, the claims recite that the start sequence is encrypted prior to being sent to the node computer (and, in claims 1 and 19, the start sequence is decrypted by the node computer).

It is respectfully submitted that none of the cited references disclose or suggest such a start sequence, and none of the cited references disclose or suggest encryption/decryption of the start sequence.

Further, Applicant agrees with the examiner's observation that "Daly et al. do not specifically recite a terminal making a determination whether it is capable to perform a transaction and if not retrieving from a host computer data for enabling the performance of said transaction."

However, Applicant disagrees with the examiner's interpretation that Southgate discloses "a terminal makes a determination that the terminal is not suited to perform a request."

Southgate is directed to upgrading existing software on a computer platform (see *Southgate*; abstract), and more specifically to a method by which software upgrades and fixes for software bugs may be incorporated into a customer's software from a remote location (see *Southgate*; col. 2, lines 32-35). The upgrade is to an existing piece of software, such as to fix an existing bug. However, Southgate makes no teaching or suggestion that "a terminal makes a determination that the terminal is not suited to perform a request."

Southgate discloses that "when, *during operation* of software on a user's platform (step 402), either *an error occurs*, the *user indicates* that in her opinion an error has occurred, or the *user wishes to request* an enhancement to the software (step 404), the software determines whether access to the Internet is available (step 406) for the purpose of connecting to the vendor of the software." (*Southgate*; col. 8, lines 34-40).

It is respectfully submitted that simply detecting an error, and reacting to the error detection, is different from determining if a terminal is configured to perform a requested transaction.

In fact, it is respectfully submitted that it is only *during performance* of a requested transaction (executing a program according to a user command) that a terminal is already configured to perform (albeit with flawed software) that such an error will be encountered.

Thus, Southgate teaches a method wherein an existing software functionality is maintained updated and error-free by informing the user about respective updates and possibly obtaining new or debugged parts of the software from the host to update the existing software. However, for the method to work, the software functionality must be already installed on the terminal. The functionality of the software is not changed by the error corrections or updates.

Since the software functionality must be already installed on the terminal, and must be started before any errors in the software functionality may be encountered, this cannot be construed as a terminal being configured to make a determination if the terminal is *not configured to perform* a requested transaction type.

It must be appreciated that Southgate begins with the premise that “no software program is ever bug free.” (*Southgate*; col. 2, line 41). Following this assertion, it cannot follow from Southgate that when a piece of software is installed on a computer system to perform a particular function, the computer system can be considered to be “not configured” to perform the function. Clearly, if “no software program is ever bug free” as Southgate asserts, a computer system could never be considered to be “configured to perform a requested transaction” if the presence of bugs in the installed piece of software renders the computer system “not configured to perform” the functionality of the installed piece of software.

It is respectfully submitted that persons of ordinary skill in the art would understand error detection to be different from determining if the terminal is configured to perform a requested task. Accordingly, it is respectfully submitted that persons of ordinary skill in the art would not be guided by any teaching or suggestion of Southgate to modify Daly in any manner to arrive at the presently claimed invention.

Even incorporating the error detection and correction of Southgate into Daly would not result in a system or terminal of the present invention wherein upon a request to perform a transaction, a terminal makes a determination as to whether or not the terminal is configured to perform the requested transaction, and if not, the terminal requests from a node computer functionality data that further configures the terminal to perform the requested transaction.

It is respectfully submitted that a combination of Daly and Southgate does not teach or suggest “said terminals being configured to make a determination if the terminal is not configured to perform the requested transaction type,” and “based on a determination that the terminal is not configured to perform the requested transaction to request functionality data from said node computer.”

Moreover, neither reference discloses or suggests transmitting a start sequence comprising card data read from a portable data carrier and requested transaction information, or encrypting/decrypting the start sequence.

For at least these reasons, it is respectfully submitted that Daly and Southgate fail to form a prima facie case of obviousness of independent claims 1, 9, 19, and 21, and therefore claims 1-13 and 15-25 are allowable over the cited references. Accordingly, withdrawal of the rejection is requested.

Conclusion


In view of the amendments to the claims, and in further view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is requested that claims 1-13 and 15-25 be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicant's attorney, the Examiner is invited to contact the undersigned at the numbers shown.

Respectfully submitted,

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